

MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Assault Offenses and Violations of
Restraining Orders Sentenced in 2011

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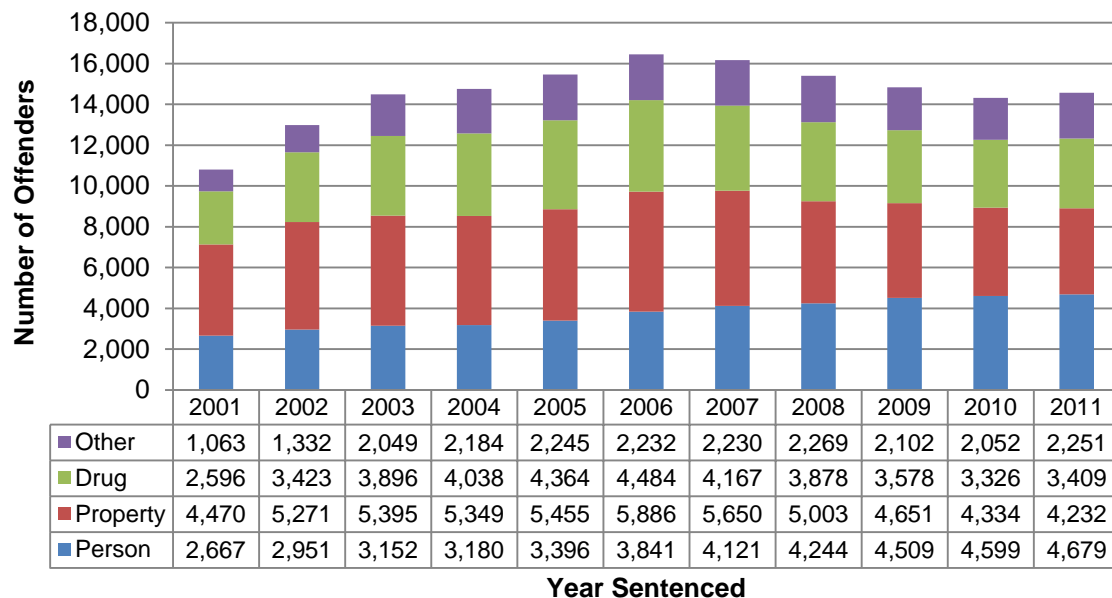
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Introduction¹

The overall trend in volume for felony offenders sentenced over the past decade has looked similar to a bell curve, with the volume reaching a high of 16,443 offenders in 2006, and generally declining since then. But despite this overall trend, the number of offenders sentenced for “person” offenses has increased each year (Figure 1).

**Figure 1. Number of Offenders Sentenced, by Offense Type:
2001-2011**



Part of the increase in person offenses is due to the fact that MSGC started tracking first-degree murder sentences; 2006 was the first full year in which first-degree murder was included in its data.² However, with roughly 25 first-degree murders sentenced each year, these cases are not the sole explanation for the increase in person offenses. The increase in certain felony assaults is also a large factor, particularly domestic assault-related offenses. There has also been an increase in the number of felony violation of restraining order offenses sentenced over the past few years.

The following report examines the increase in these offenses over the last several years and considers the impact of statutory enhancements in 2005 and 2006 to the domestic assault and violation of restraining order statutes. It also provides information on revocation rates for assault and violation of restraining order offenses, based on MSGC's analysis of technical revocations to prison for probation violations.

¹ It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

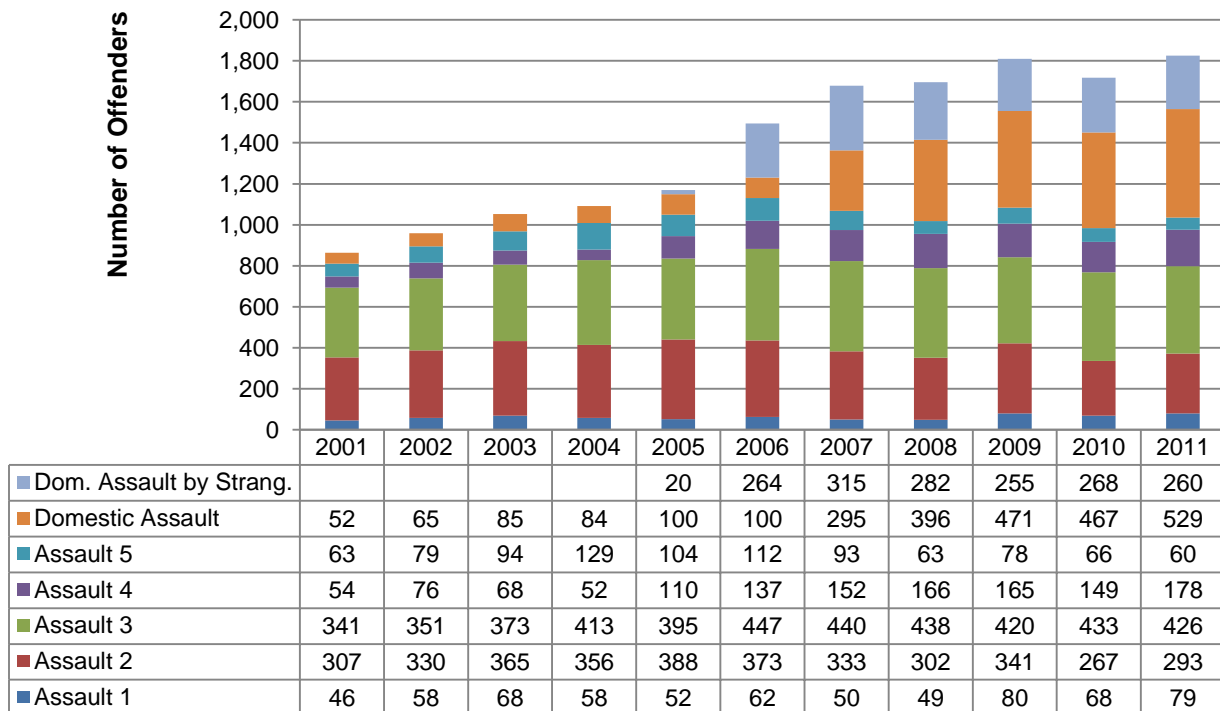
² Before August 1, 2005, first-degree murder was not included in the MSGC's dataset; first-degree murder is excluded from the sentencing guidelines by law and continues to have a mandatory life sentence.

Assault Offenses

Distribution of Cases

Both the overall number of person offenses and assault offenses increased in 2011 (Figure 2). Between 2010 and 2011 there was a six percent decrease in the total number of offenders sentenced for felony-level assault offenses, but there was variation in the changes among the various types of assault. This variation is almost opposite of that observed in 2010. While in 2010 there were increases in the number of offenders sentenced for third-degree assault and domestic assault by strangulation, in 2011 both these categories decreased. In 2010, the number sentenced for almost every other type of assault decreased, while, in 2011, almost every other type of assault increased. First-degree assault increased by 16 percent, second-degree assault increased by roughly 10 percent, fourth-degree assault increased by 19 percent, and domestic assault increased by 13 percent. The number of offenders sentenced for third-degree assault decreased by 2 percent, fifth-degree assault decreased by 9 percent, and domestic assault by strangulation decreased by 3 percent.

Figure 2. Frequency of Assault Offenses: 2001-2011



Domestic Assault

Felony domestic assault is chargeable when the offender has two or more qualified domestic violence-related prior offenses. In 2006, the Legislature removed the requirement that the prior offenses had to be against the same victim, expanded the look-back to 10 years, and also expanded the list of qualified priors. By enacting these statutory changes, the legislature widened the net for those eligible to be sentenced for this offense as felony-level offenders. Since the enactment of this legislative change, the number of offenders sentenced for felony domestic assault has more than quadrupled. While there was an increase in the number of offenders sentenced for domestic assault between 2001 and 2005, before the statutory enhancements were enacted, the annual increases observed since 2006 have been dramatic, increasing from a low of 100 cases in 2006 to highs of 471 cases in 2009, 467 cases in 2010, and 529 cases in 2011 (Figure 2).

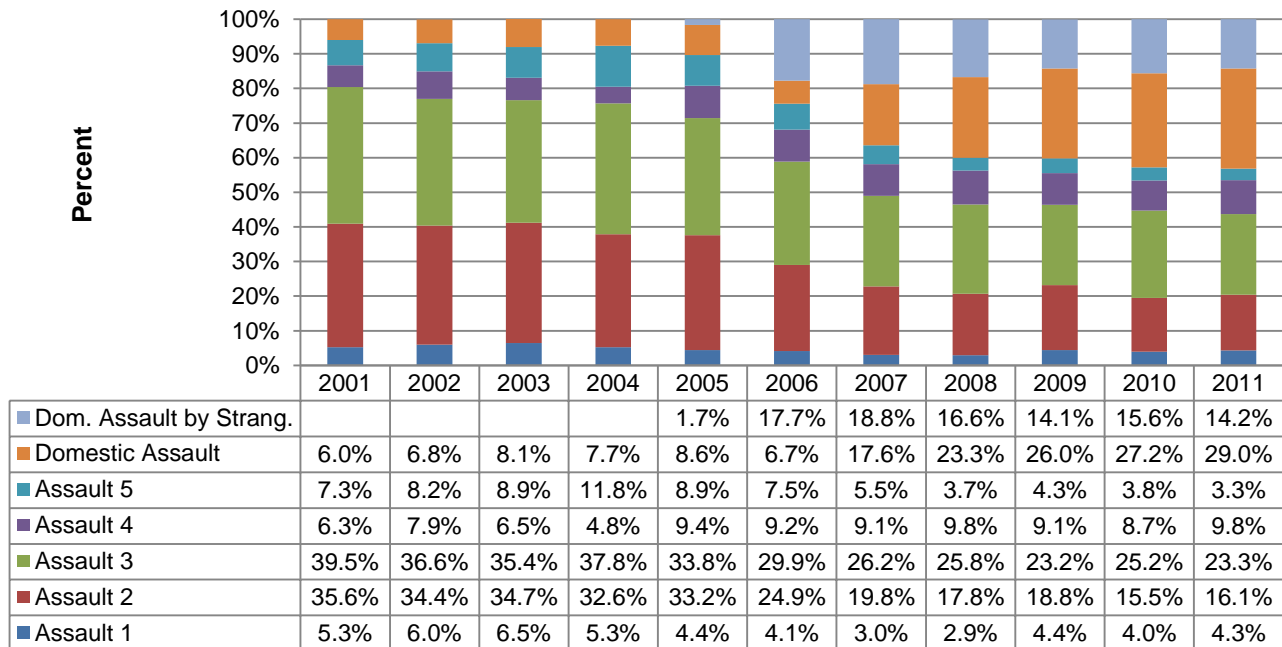
Domestic Assault by Strangulation

In 2005, the Legislature made it a felony to assault a family member or household member by strangulation. Prior to the enactment of domestic assault by strangulation, this type of criminal behavior may have been categorized and charged under other felony assault offenses, such as domestic assault and third- and fifth-degree assault. As Figure 2 illustrates, the number of offenders sentenced for this offense quickly climbed to 315 offenders in 2007, then decreased slightly in 2008 and 2009 (282 and 255 offenders, respectively), before rising again in 2010 to 268 offenders, and showing a slight decrease in 2011 to 260 offenders.

Even the decrease in fifth-degree assault, for which we have seen the most dramatic decrease of 46 percent from 112 offenders in 2006 to 60 offenders in 2011, does not involve a large enough caseload to have contributed to the majority of the increase in domestic assault by strangulation offenses. Therefore, it is likely that these are primarily cases that would not have been felony offenses before the statutory change.

Figure 3 provides another way to examine felony assault offenses. While Figure 2 displayed the number of offenders sentenced for each type of assault, Figure 3 shows the proportion each assault offense comprises of all felony assaults. With the creation of felony offenses for repeat domestic assaults and domestic assault by strangulation, the composition of the assault offenses has changed in recent years. For example, felony domestic assault offenses made up less than seven percent of the felony assaults sentenced in 2006; by 2009, the percentage increased to over 26 percent of assaults. Since 2008, felony domestic assaults and domestic assault by strangulation have made up just over 40 percent of all assaults sentenced.

Figure 3. Distribution of Assault Offenses: 2001-2011



Second-Degree Assault

Much of the discussion has been focused on increases in the number of domestic assault offenses. However, it is also interesting to note the decrease in second-degree assaults. Figure 2 illustrates that until 2009, there had been a decrease in the number of offenses sentenced over the previous four years. In 2010, the number declined again to below 300 for the first time in the last decade. In 2011, the number slightly increased, but still stayed below 300. Figure 3 shows the marked decrease in the proportion of these offenses since 2001. In that year, second-degree assault offenses made up almost 36 percent of felony assaults; in 2011, they made up 16 percent.

*Incarceration Rates*Domestic Assault

The increase in felony-level domestic assault offenders translates into an increased need in correctional resources, both from state prisons and local jails. As Table 1 shows, the average lengths of prison sentences and conditional jail time have fluctuated within a narrow range over the last eleven years; there has not been an obvious trend in either direction. However, the number of cases for which prison or jail are pronounced has increased dramatically in the last four years. The 502 offenders sentenced to prison in the last five years have resulted in the need for an additional 636 prison beds.³ The 1,467 offenders receiving jail time as a condition of their stayed sentences have resulted in the need of an additional 284 jail beds.⁴

Table 1. Length of Pronounced Sentence for Domestic Assault Cases, Sentenced 2001-2011

Year	# Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (months)	Prison Beds	Jail Rate	Average Duration (days)	Jail Beds
2001	52	7 13%	21	8	40 77%	131	10
2002	65	11 17%	22	14	48 74%	128	11
2003	85	15 18%	25	21	66 78%	111	13
2004	84	18 21%	23	23	56 67%	143	15
2005	100	21 21%	24	28	77 77%	131	19
2006	100	16 16%	20	18	73 73%	153	21
2007	295	61 21%	23	77	213 72%	104	41
2008	396	101 26%	22	126	270 68%	117	58
2009	471	97 21%	23	126	332 71%	102	62
2010	467	118 25%	24	156	278 60%	107	55
2011	529	125 24%	22	153	374 71%	104	72
Total	2,644	590 22%	23	750	1,827 69%	111	377

³ Based on the average prison term of 22.7 months from 2007-2011, serving 2/3 or 15.2 months. 502 offenders x 15.2 mos.=7,634.9/12 mos.=636 prison beds.

⁴ Based on the average jail term of 106.6 days from 2007-2011, serving 2/3 or 71.42 days. 1,467 offenders x 71.42 days=104,776/365 days=287 jail beds.

Domestic Assault by Strangulation

As mentioned earlier in this report, the creation of a felony domestic assault by strangulation offense in 2005 has also contributed to the increase in person offenses over the last few years. Table 2 provides incarceration data for offenders sentenced for domestic assault by strangulation since the enactment of the statute in 2005. This offense is ranked at the same severity level as felony domestic assault, so it is not surprising that the average prison sentence pronounced is very similar to that average. However, for those offenders receiving stayed sentences, the pronounced jail time is less. The imprisonment rate for these offenders is less than for offenders sentenced for domestic assault because of differences in the percent recommended prison sentences based on criminal history scores. The 135 offenders sentenced to prison have created a need for 171 additional prison beds.⁵ The 1,393 offenders who received jail time as a condition of their stayed sentences required 211 additional jail beds.⁶

Table 2. Length of Pronounced Sentence for Domestic Assault by Strangulation Cases, Sentenced 2005-2011

Year	# Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (in months)	Prison Beds	Jail Rate	Average Duration (in days)	Jail Beds
2005	20	2 10%	20	2	18 90%	66	2
2006	264	16 6%	24	21	229 87%	89	37
2007	315	22 7%	22	28	272 86%	91	45
2008	282	22 8%	22	26	239 85%	83	36
2009	255	26 10%	22	33	206 81%	80	30
2010	268	24 9%	23	31	208 78%	81	31
2011	260	23 9%	25	32	221 85%	71	29
Total	1,664	135 8%	23	171	1,393 84%	82	210

⁵ Based on the average prison term of 22.7 months from 2005-2011, serving 2/3 or 15.2 months. 135 offenders x 15.2 mos.=2,053/12 mos.=171 prison beds.

⁶ Based on the average jail term of 82.5 days from 2005-2011, serving 2/3 or 55.3 days. 1,393 offenders x 55.3 days=76,998/365 days=211 jail beds.

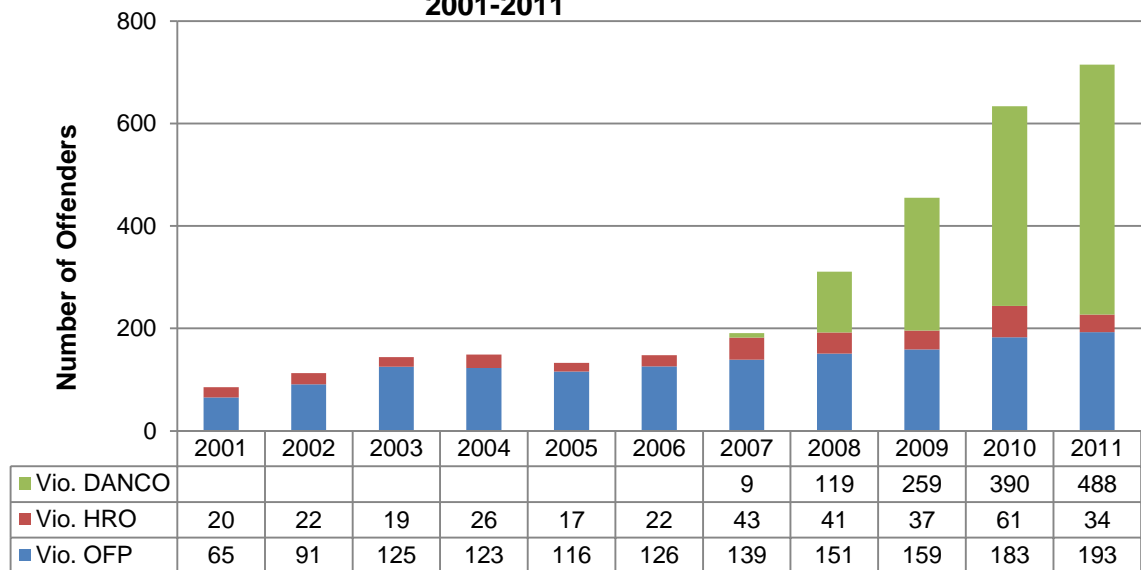
Violation of Restraining Order Offenses

A dramatic case volume increase has occurred in violations of restraining orders (Figure 4). There are three offenses in this group: violations for orders of protection (OFP) under Minn. Stat. § 518B.01, subd. 14(d), violations of harassment restraining orders (HRO) under Minn. Stat. § 609.748, subd. 6(d), and violations of domestic abuse no contact orders (DANCO) under Minn. Stat. § 629.75, subd. 4(d). Each involves offenders who have prior offenses from a list of qualified domestic-violence offenses and who violate the restraining orders against them. The list of prior qualified offenses was expanded in 2006 and a standardized 10-year look-back period was also implemented at that time. Violation of DANCO is the newest offense in this group, effective for crimes committed on or after August 1, 2007. Prior to 2008, violations of DANCO by an offender with qualified prior offenses was punishable as a gross misdemeanor.

Distribution of Cases

As Figure 4 shows, there has been a large increase in the number of offenders sentenced in the last five years. From a total of 148 offenders sentenced in 2006, the year the Legislature implemented the policy changes described above, the number has grown to 715 in 2011.

Figure 4. Frequency of Violation of Restraining Order Offenses: 2001-2011



Incarceration Rates

As Table 3 shows, the average lengths of prison sentences have fluctuated within a narrow range over the last eleven years. There appears to be a slight decrease in the average conditional jail time pronounced. A higher percentage of these offenders receive prison sentences than those sentenced for either of the domestic assault offenses. While the imprisonment rates have remained fairly stable, the number of cases for which prison or jail is pronounced has increased dramatically in the last three years. The 690 offenders sentenced to prison in the last five years resulted in the need for an additional 859 prison beds.⁷ The 1,428 offenders receiving jail time as a condition of their stayed sentences resulted in the need for an additional 278 jail beds.⁸

Table 3. Length of Pronounced Sentence for Violation of Restraining Order Cases, Sentenced 2001-2011

Year	# Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (in months)	Prison Beds	Jail Rate	Average Duration (in days)	Jail Beds
2001	85	12 14%	27	18	64 75%	127	15
2002	113	28 25%	22	34	78 69%	120	17
2003	144	29 20%	23	37	96 67%	127	22
2004	149	47 32%	23	60	94 63%	140	24
2005	133	27 20%	22	33	99 74%	116	21
2006	148	39 26%	24	52	95 64%	109	19
2007	191	51 27%	25	71	125 65%	105	24
2008	311	91 29%	23	117	195 63%	111	40
2009	455	142 31%	24	190	291 64%	106	57
2010	634	197 31%	22	242	364 57%	108	72
2011	715	209 29%	22	262	453 63%	103	86
Total	3,078	872 28%	22	1,116	1,954 64%	111	397

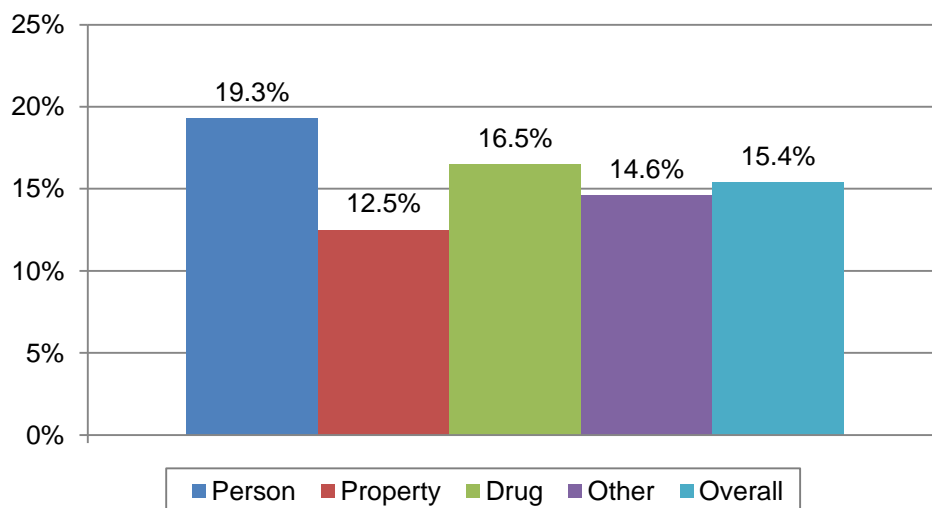
⁷ Based on the average prison term of 22.3 months from 2007-2011, serving 2/3 or 14.9 months. 690 offenders x 14.9 mos.=10,309/12 mos.=859 prison beds.

⁸ Based on the average jail term of 106 days from 2007-2011, serving 2/3 or 71 days. 1,428 offenders x 71 days=101,388/365 days=278 jail beds.

Revocation Rates

The 2011 Minnesota Sentencing Guidelines Commission Probation Revocation Report provides information about felony-level offenders sentenced from 2001-2010 who were revoked to prison due to probation violations. A probation violation occurs when an offender's behavior or criminality violates conditions of probation, but does not result in a felony criminal conviction.⁹ Offenders whose probation was revoked due to the commission of a new offense are classified as new admissions and, therefore, were not included in this analysis. This report, entitled *Probation Revocations: Offenders sentenced from 2001-2010 who were revoked to prison due to probation violations*, is now updated annually and available on the MSGC website. The most current version of this report looks at offenders who received an initial stayed sentence between 2001 and 2010, and were tracked for revocations through December 31, 2011. Through 2011, the overall revocation rate was 15 percent, with the majority of revocations occurring within two years of sentencing. As Figure 5 illustrates, revocation rates varied by offense type, with offenders sentenced for person offenses having the highest rate of revocation. An interesting point to note: revocation rates tended to be higher for offenders who were supposed to go to prison according to the Sentencing Guidelines Grid (i.e., original probation sentence was a mitigated dispositional departure). Offenders who are recommended prison have either committed a more serious offense or have accumulated multiple criminal history points. This may be part of the reason why person offenders have a higher revocation rate than all other offenders.

**Figure 5. Revocation Rates by Offense Type:
2001-2011**

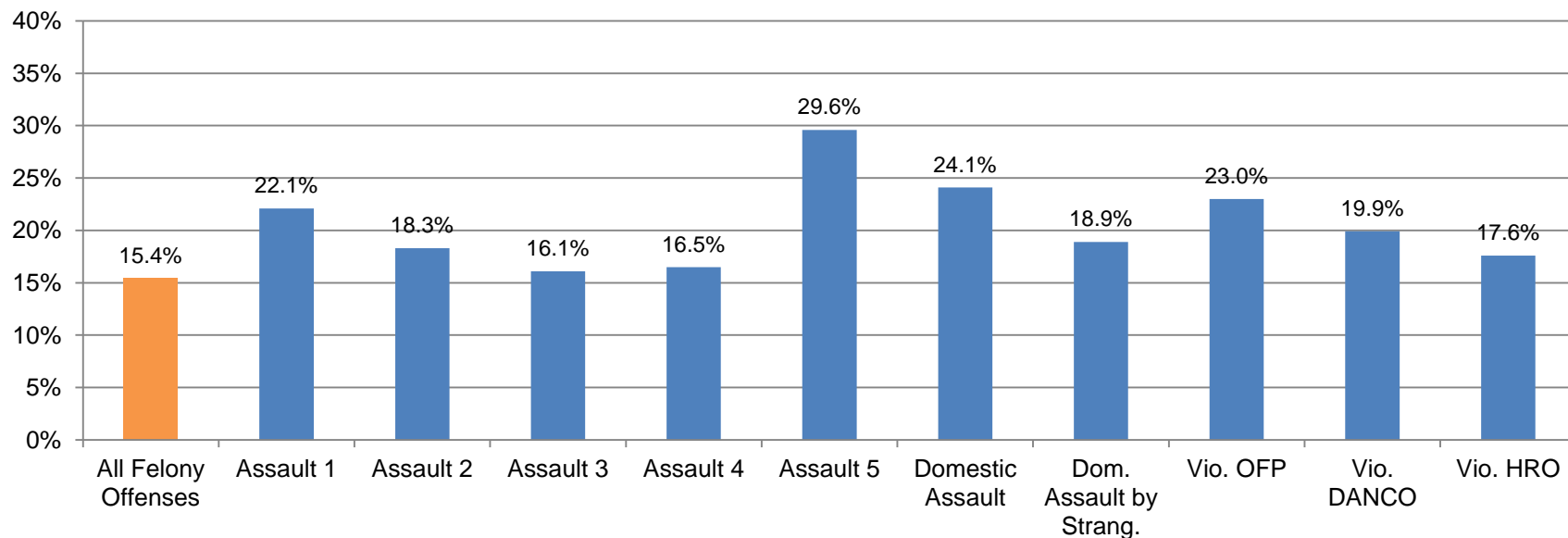


⁹ The behavior resulting in a probation revocation could include a conviction for a gross misdemeanor or misdemeanor offense. These convictions would not in and of themselves result in the offender returning to prison because they carry the potential for jail sentences rather than prison sentences. However, the criminal behavior would trigger a probation revocation proceeding, which could then result in a probation revocation for violating the conditions of probation.

In examining the category of person offenses, it is clear that the revocation rate also varies by offense category: murder and manslaughter offenses have a revocation rate of just less than 16 percent, while criminal sexual conduct offenses have a rate of 24 percent. Assault offenses have an overall rate of roughly 19 percent.¹⁰ In the assault group, revocation rates for first- through fourth-degree assaults, as well as domestic assault by strangulation, range from 16 to 22 percent, while the revocation rates for fifth-degree assault and domestic assault are higher: 30 percent and 24 percent, respectively (Figure 6). Fifth-degree assault and domestic assault are unique in that they are felony offenses because the offender has prior related misdemeanor and gross misdemeanor offenses. Because these offenders have already committed several similar misdemeanor offenses, they may be less likely to succeed on probation. As described on the previous page, offenses involving violations of restraining orders are also enhanced to felonies because of prior related offenses; the revocation rate for these offenses averages 21 percent.¹¹

Given the growing number of domestic assault and violations of restraining order offenses, and the fact that many of these offenses have a higher-than-average revocation rate, it is important to be aware of how this may affect the prison population in years to come.

Figure 6. Revocation Rates for Assault Offenses & Violations of Restraining Orders: 2001-2011



¹⁰ *Probation Revocations: Offenders sentenced from 2001-2010 who were revoked to prison due to probation violations, November 2012, p. 14.*

¹¹ Domestic assault by strangulation became effective August 1, 2005. Violation of DANCO became effective August 1, 2007. It is unclear what the future revocation rates will be for these relatively new offenses.

How the Guidelines Work

Minnesota's guidelines are based on a grid structure. The vertical axis of the Grid represents the **severity** of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's **criminal history**. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the **Severity Reference Table** in the *Minnesota Sentencing Guidelines and Commentary*.

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was on probation or parole when the current offense was committed.

The recommended (presumptive) guideline sentence is found in the cell of the sentencing grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the grid.

The Guidelines generally recommend a stayed sentence for cells in the shaded area of the applicable Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of conditional confinement in a local facility (jail or workhouse). Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the applicable Guidelines Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).


The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the applicable Grid, the Guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the Guidelines.


It is not possible to fully explain all of the policies in this brief summary. Additional information on the Guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at <http://www.msgc.state.mn.us>.

Sentencing Guidelines Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480³</i>	426 <i>363-480³</i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-86</i>
<i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$2,500)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ 12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.